

**CALIFORNIA COASTAL COMMISSION**

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# Fri 6b

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Staff: EL-SD  
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Hearing Date: June 9-11, 2004

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Del Mar

DECISION: Approved with Conditions

APPEAL NO.: A-6-DMR-04-24

APPLICANT: City of Del Mar

PROJECT DESCRIPTION: Installation of two “pay and display” parking machines and associated signage at an informal, approximately 50 space, public parking area and ongoing regulation of parking through the use of such machines.

PROJECT LOCATION: West side of Camino del Mar, just north of the Camino del Mar/Carmel Valley Road intersection, Del Mar, San Diego County.

APPELLANTS: Rick T. Beatty; Christopher Miller; Coastal Commissioners Patrick Kruer and Pedro Nava

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### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission approve the de novo permit application with several special conditions addressing operation of the “pay and display” machines, term of the permit, and offsetting public benefits.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Del Mar LCP; Del Mar CDP-04-01; Appeal Forms

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I. Appellants Contend That: Appellants Beatty and Miller contend that: 1). The City approval is inconsistent with the access policies of the Coastal Act in that the City is attempting to charge a parking fee, thus controlling access to a state beach, not a

municipal beach. 2). The permit is an after-the-fact permit and the City should face punitive measures.

Appellants Kruer and Nava contend that: 1 ). The permit is inconsistent with the public access policies of both the certified LCP and Coastal Act. 2). The City failed to establish enforceable criteria addressing costs, hours and area, in its permit. 3). The City failed to provide alternative, free options or amenities to the general public. 4). The City did not adequately assess the potential for displaced motorists to go to other locations, potentially overloading facilities that now operate at capacity.

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II. Local Government Action. On January 27, 2003, the City of Del Mar Coastal Development Permit (CDP) was approved by the Planning Director. The decision was appealed, and, on March 15, 2004, the City Council approved the CDP with only standard conditions addressing business licenses and the permit's expiration date.

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III. Appeal Procedures. After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1). Where the project is located between the sea and the first public road paralleling the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b)(1) of the Coastal Act.

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a

majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

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#### Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission determine that Appeal No. A-6-DMR-024 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-6-DMR-024 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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### Findings and Declarations.

1. Project Description/Permit History. The City of Del Mar proposes installation of two “pay and display” machines along an approximately 1,700 foot distance where informal parking now occurs, and ongoing regulation of parking through use of these machines. The area is parallel to Camino del Mar, on the west side within the right-of-way, and consists of an open, unvegetated strip separated from the paved road by a curb. Vehicles have historically parked within this strip between the intermittent roadside trees to access an unimproved dirt trail leading down the bluff to the beach, or to enjoy the panoramic views available in this location. The “pay and display” machines are similar to parking meters in appearance, although significantly larger. Each machine can serve 25-30 cars; when fed, they produce a ticket to be displayed on the vehicle’s dashboard. The paid parking machines were actually installed last autumn and fees were collected for a few months before the matter was reported to the Commission and a determination was made that the machines represent a change in intensity of use of the area and thus require a coastal development permit. At that point, the City covered the machines, stopped collecting fees and began processing a coastal development permit. The City’s current program establishes an hourly rate of \$1.50 and has no maximum hour limitation. Signage adjacent to the machines indicates they will be in operation seven days a week, between the hours of 9:00 a.m. and 8:00 p.m.

The site is within the City’s CDP jurisdiction, but appealable to the Commission, and the City, after a local appeal, issued itself a permit in March, 2004. On March 30<sup>th</sup> and April 1<sup>st</sup>, appeals to this Commission were filed by outside interested parties and by Commissioners.

2. Public Access and Recreation. Because this site is between the first public road (Camino del Mar) and the sea, both the certified LCP and the public access policies of the Coastal Act are standards of review. Pertinent LCP policies, in part, are cited below, followed by applicable Chapter 3 policies (also in part):

#### **Goal IV-A**

Provide physical and visual access to coastal recreation areas for all segments of the population ... .

#### **Goal IV-A, IV-9**

Improved vertical access ways to the beach and trailhead areas shall include appropriate support facilities such as trash receptacles and bicycle racks as determined necessary.

#### **Goal IV-B, Policy IV-17**

The City shall continue to encourage the use of bicycles for transportation to coastal recreation areas. The City shall also promote the installation of bicycle racks at

intermittent locations along the beach and lagoon areas as well as the following locations: ... along Camino del Mar in the vicinity of Carmel Valley Road.

#### **Goal IV-C, Policy IV-22**

Enhance public improvements along appropriate bluff top areas which provide significant scenic vistas when such improvements are not in conflict with bluff preservation policies. Improvements shall include the installation of benches for scenic viewing ... along the upper bluff area south of Del Mar Canyon,

#### **Section 30210**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

#### **Section 30211**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

#### **Section 30212.5**

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

#### **Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The following analysis will address each point made by the two sets of appellants:

Appellants Beatty and Miller contend that:

1. The City approval is inconsistent with the access policies of the Coastal Act in that the City is attempting to charge a parking fee, thus controlling access, to a state beach, not a municipal beach.

Charging fees where parking was previously free may limit public access and thus represents a change in the intensity of use of the site. In this way, the fee may be inconsistent with the LCP and Coastal Act, in that it creates a potential to exclude portions of the public. However, the proposed parking machines would be located entirely on City-owned land, and these parking spaces serve bluff top viewing as well as beach access; the bluff is also in the City's ownership. Moreover, the state itself charges a parking fee to those using the state beach. In these days of tightened budgets, the Commission has not found it unreasonable that some fees be imposed to enable local governments to meet their public safety and maintenance responsibilities, such that the public recreational amenities can be retained on a long-term basis. Moreover, neither the appellants nor the State department in charge of the beach has provided any authority for the general proposition that a municipality's ability to regulate parking on its own property is restricted when that property provides access to a state beach, and nothing in the above LCP or Coastal Act policies stands for such a proposition.

2. The permit is an after-the-fact permit and the City should face punitive measures.

Although the applicant installed the parking facilities without benefit of a CDP, there was initially some confusion over whether a permit was required. Since the ultimate determination was that the installation of the parking machines, as well as changing from a free to paid system, did meet the certified LCP and Coastal Act definitions of development, the City's action of performing development without a CDP is a violation of the Coastal Act. The basis for finding substantial issue is potential inconsistency with the certified LCP and the access policies of the Coastal Act and a determination that the issue meets the substantiality standard. The fact that this is an after-the-fact request for authorization is irrelevant to the consistency or inconsistency of the development with the LCP and Coastal Act access policies. However, the violation aspect of the proposed development will be pursued as a separate enforcement matter.

Appellants Kruer and Nava contend that:

1. The permit is inconsistent with the public access policies of both the certified LCP and Coastal Act.

The cited policies make clear that maximum access is to be provided for all segments of society and also provides that lower cost visitor facilities shall be protected. The City's action will result in the need for the visiting public to pay for parking where no payment was required previously. Thus, access may be adversely affected and there is a substantial issue raised by the grounds on which the appeal was filed. The existing parking spaces are adjacent to the bluff and beach, and are used solely to access the bluff and beach. As parking in this location was previously free, charging for parking may result in a change in use of this area, as some members of the public may not be able to afford the parking fee. There are no other convenient locations to park and access the bluff/beach in this area that do not already require a fee. Thus, charging a fee raises a substantial issue on the grounds on which the appeal was filed.

2. The City failed to establish enforceable criteria addressing costs, hours and area, in its permit.

Although the City addressed parking fees, hours of operation, and time limits in their staff report, they did not include any of these criteria in the actual permit. Without such criteria in the permit itself, there is nothing to enforce if the City chooses in the future to change these parameters, limiting public access even further. Any change (increase) in fees would, in tandem, increase the number of persons unable to afford to come to this beach. Increases in the hours of operation could adversely affect new and different user groups. Surfers and divers often prefer the early morning hours before the majority of beachgoers arrive, and before the currently proposed hours of operation take effect. Likewise, as described herein, there are currently no limits on how long one can stay at the beach, as long as the hourly fee is paid. Imposition of time limits in the future could discourage many members of the public from coming to the beach at all. The result of any of these changes would be further restricting public access over what is now proposed. This raises a substantial issue because these parameters could be changed with no public review, no monitoring and no offsetting benefits., thus reducing public access which is inconsistent with both the LCP and the Coastal Act. Therefore, the Commission finds that there is a substantial issue raised by the grounds on which the appeal was filed.

3. The City failed to provide alternative, free options or amenities to the general public.

The certified LCP calls for both bicycle racks and viewing benches to be installed in this general location to enhance public access and recreational amenities. Although the LCP does not require these amenities as offsetting benefits for any specifically identified actions, these improvements would mitigate for the potential access impacts of initiating paid parking. Without providing these, or other, enhancements, the City is nonetheless proposing paid parking such that access is actually more limited than at present. Since vehicular access in this location may now be unaffordable for segments of the public, the provision of bicycle facilities would offer an alternative means to still gain free access to the beach. Enhanced viewing opportunities along the bluff (benches placed in strategic locations to gain the best views) would offer an additional recreational amenity to pedestrians, bicyclists and motorists alike. Without these, or other, offsetting benefits, the proposal directly reduces access for some members of the public. For all the above reasons, this appeal raises a substantial issue on the grounds on which it was filed

4. The City did not adequately assess the potential for displaced motorists to go to other locations, potentially overloading facilities that now operate at capacity.

The requirement to pay for parking at the proposed site may direct some people elsewhere to seek out free parking or lower rates. There is no other place to park in the general vicinity that is free and/or convenient for the public to use. The subject access point is more than a mile south of 15<sup>th</sup> Street, which is the nearest safe access point to the north, and nearly half a mile north of the nearest free parking and beach access to the south. The subject section of beach is located at the far southern end of the City of Del Mar, and is actually the northern extension of Torrey Pines State Beach. Because of the

severe topographic impediments on the dirt trail between the blufftop and the beach, this stretch of shoreline is not heavily used. However, most of the county's beaches and public beach parking lots are full during the summer season, and at, or beyond, capacity on summer weekends. If persons are displaced from the subject area because of the imposition of parking fees, these alternative beaches may become severely overloaded. This would be inconsistent with Section 30212.5 of the Coastal Act, cited above, which provides that overcrowding of public recreational facilities should be avoided. Therefore, the Commission finds that a substantial issue is raised by the grounds on which this appeal was filed.

The findings above demonstrate that the city's approval is inconsistent with both the certified LCP and the Coastal Act access policies. For all the identified reasons, a substantial issue has been raised by the city's action.

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#### STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-DMR-04-024 pursuant to the staff recommendation.*

#### STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

#### II. Standard Conditions.

See attached page.



### III. Special Conditions.

The permit is subject to the following special conditions:

1. Operating Parameters. The paid parking program approved herein shall operate under the following parameters:

- a. The hourly parking fee shall be \$1.50
- b. There shall be no maximum time limit set on the use of spaces
- c. The fee shall be in effect daily, between the hours of 9:00 a.m. and 8:00 p.m. only

The permittee shall undertake the parking program in accordance with the approved operating parameters. Any proposed changes to the approved operating parameters shall be reported to the Executive Director. No changes to the approved operating parameters shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Public Access Mitigation. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans (site plan and elevation) for the following project and mitigation items:

- a. The location and style of the two “pay and display” parking machines and any associated, free-standing signage.
- b. Bicycle racks shall be installed west of the Camino del Mar travel lanes, approximately at the intersection of Carmel Valley Road and Camino del Mar, where there is an existing opening in the guard-rail.
- c. A minimum of two viewing benches shall be installed on the bluff top west of the paid parking, and shall be placed in the manner that best enhances the existing panoramic views.

Within 9 months of issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director for review and written approval, that the public access improvements identified in Subsections b and c above have been installed and are available to the public.

The permittee shall undertake the installation of the mitigation features in accordance with the final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an

amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Term of Permit. The permit approved herein shall be valid for one year from the date of Commission action. At that time, the applicant may request an amendment to the permit to allow additional time. If the mitigation required in Special Condition #2 has not occurred, the applicant shall submit documentation of the status of such mitigation features and a progress report detailing the efforts expended by the City in this regard. This information shall be considered in the Commission's decision on the amendment request.

4. Opening of Torrey Pines State Beach Accessway. The applicant shall work diligently with other agencies towards repair of the Camino del Mar bridge, and towards the re-opening of the public beach accessway that passes beneath the bridge. If the accessway has not been reopened within one year of the date of Commission action, the City shall submit a progress report on these efforts with any application to extend the term of the permit. This information shall be considered in the Commission's decision on the amendment request.

5. Condition Compliance. **WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### IV. Findings and Declarations.

1. Project Description. The City of Del Mar proposes installation of two "pay and display" machines serving an approximately 1,700 foot-long area where free informal parking now occurs. The area is on the west side of Camino del Mar (within the public right-of-way), just north of the intersection with Carmel Valley Road, and consists of an open, unvegetated strip separated from the paved road by a curb. Vehicles have historically parked within this strip between the intermittent roadside trees to access an unimproved dirt trail leading down the bluff to the beach, or to enjoy the panoramic views available in this location along the bluff top. The "pay and display" machines are similar to parking meters in appearance, although significantly larger. Each machine can serve 25-30 cars; when fed, they produce a ticket to be displayed on the vehicle's dashboard. The City's current proposal is to charge an hourly rate of \$1.50 with no maximum hour limitation. Signage adjacent to the machines indicates they will be in operation seven days a week, between the hours of 9:00 a.m. and 8:00 p.m.

The paid parking machines were actually installed last autumn and fees were collected for a few months before the matter was reported to the Commission and a determination was made that the machines represent a change in intensity of use of the area and thus require a coastal development permit. At that point, the City covered the machines and

stopped collecting fees. The site is within the City's CDP jurisdiction, but appealable to the Commission, and the City, after a local appeal, issued itself a permit in March, 2004. On March 30<sup>th</sup> and April 1<sup>st</sup>, appeals were filed in the San Diego Coastal Commission office, both by outside interested parties and by the Commission.

The project site is at the southern end of Del Mar, and is located between the first public road (Camino del Mar) and the sea. The legal standard of review for this permit is consistency with both the City of Del Mar certified LCP and the Chapter 3 access policies of the Coastal Act.

2. Public Access and Recreation. The applicable LCP and Coastal Act policies can be found in the Substantial Issue portion of this report, and are incorporated herein by reference. This location is a popular parking spot for surfers, joggers, and general beach users, as it accesses the northern portion of Torrey Pines State Beach. Beach access from the bluff top parking area is gained via an unimproved, rocky, narrow, dirt trail west of Camino del Mar. The condition of this trail already impedes access for many, including the elderly and disabled. The area is isolated from both the main portion of Del Mar to the north and the Torrey Pines State Beach facilities to the south, and provides the only free area to access this beach, etc. Implementation of parking fees raises a concern as to public access in that such a fee may affect use of this area by the general public.

On the other hand, the Commission has, on several past occasions, supported the right of a local government to collect fees for services rendered. There are few areas of the urbanized California coastline that do not have some form of parking fee or program, and these are generally driven by the public safety and upkeep costs of maintaining public beaches. That is the City of Del Mar's stated purpose for the subject proposal, as was the case ten years ago when the Commission approved the installation of identical machines at the northern end of the city. These "pay and display" machines are currently in operation along Border Avenue, the western portion of Via de la Valle, and the portion of Camino del Mar north of the San Dieguito River bridge.

The Commission's main concern in regard to such programs is that the operating parameters of such a program be reasonable and in the best interest of the public at large. A secondary concern is the "spillover" affect that may occur as people move to other areas that do not have a fee or charge less; this is discussed extensively in the following paragraphs. Fees should be comparable to those charged at similar facilities, such as state beaches, and time limits should consider the longer stays of recreational users. Typically, the Commission has not allowed time limits of less than four hours in beach areas, since shorter time periods could significantly affect the quality of the public's beach experience. The subject proposal does not include any maximum time limits, so, by paying the hourly fee, people can stay all day if they wish. In the subject application, the city is also proposing operating hours of 9:00 a.m. to 8:00 p.m.. These parameters are generally consistent with the Commission's actions on similar proposals. Special Condition #1 states the proposed parameters, and is imposed to assure that these parameters are not modified at the city's discretion without further Commission review.

Nothing in the City file indicates that any type of analysis was conducted regarding other free parking in the area to try to determine if there would be adverse impacts from “spillover.” However, based on review by Commission staff, there is some limited free street parking approximately 2,000 ft. south of this location, across the railroad bridge (although it is currently affected by construction of the City of San Diego in replacing the southern bridge over the mouth of Los Penasquitos Lagoon), and paid parking at Torrey Pines State Beach and 15<sup>th</sup> Street, both more than a mile distant from the project site. These parking areas are often fully utilized by mid-morning, especially during summertime and weekends. The only nearby free parking is within residential areas east of Camino del Mar. However, it is not likely this area would be utilized by beach goers as it would require hiking several blocks carrying one’s beach paraphernalia and crossing Camino del Mar where there are no traffic signals to access the beach. In addition to not analyzing the potential effects, if any, the public paid parking might have on surrounding streets or providing information about the proximity of alternative free public parking, the City has not proposed installation of bicycle racks, viewing benches, and potentially other items, to mitigate for the loss of free parking in this location.

Bicycle racks will provide a free alternative to vehicular paid parking. Camino del Mar includes a bicycle lane, and bicyclists use the area often. Although in many cases use of the viewing benches would still require payment of a parking fee, they would also be available for use by bicyclists and pedestrians. Therefore, Special Condition #2 is attached to require that some of these alternative recreational features are provided in conjunction with operation of the paid parking program. The condition requires placement of bicycle racks and viewing benches, both of which are called for in this general area by the certified LCP. The condition requires submittal of a plan for these items, and then installation of same within nine months of permit issuance.

Special Condition #3 limits the subject permit to a term of one year only. This will provide the Commission an opportunity to review the paid parking program once again and assess any unforeseen impacts. This is typical of the Commission’s handling of other proposals for which impacts are difficult to assess in advance. A trial period allows the operation to proceed for a long enough period that any unexpected yet significant problems should surface and may be addressed in future Commission actions. The one-year term for the permit also provides a means to review the status of the approved mitigation features. The City may apply for an amendment (or amendments) to retain the paid parking for a longer period, but must include with any amendment request a status report addressing compliance with Special Condition #2. It is expected that the mitigation facilities will be in place long before any amendment request to extend the term of the permit comes forward. Should unexpected delays, not of the city’s making, delay placement of these amenities, the applicants must document what the delay is and what’s being done to remedy it. It will also be necessary to amend any affected special conditions to reflect any extended time needed to comply with said conditions. The Commission shall consider such explanations when determining whether or not to extend the term of the permit, and allow the paid parking program to continue to operate.

It is possible that some people who currently park at the subject site would relocate to the North Torrey Pines State Beach parking lot. This is also a paid facility, but applies a daily rate instead of an hourly one. People planning long stays at the beach would probably find this parking lot more economical. Generally speaking, there is more than enough availability in this parking lot to accommodate anyone who is displaced from the subject Camino del Mar location. However, on holidays and holiday weekends, the lot fills up and overflows, so conflicts could occur in adding even one more car

This parking lot is the only other convenient means of accessing this particular stretch of beach. There are two existing accessways from the parking lot to the beach, one of which is currently “closed” due to debris falling onto the path from the underside of the Camino del Mar bridge. This access exits onto the beach closest to the path at the subject site, at the northern end of the beach, just south of the railroad tracks (the path at the subject site comes out onto the beach just north of the tracks). There is signage at either end of the path indicating the path is closed, but there are no actual physical barriers in place, and the path is used regularly. According to the city, the bridge is in need of seismic retrofitting and other repairs, at a minimum, but many agencies are involved and it is not known when such repairs/retrofitting will occur. The signs protect the various jurisdictional entities (Del Mar, State Parks and North County Transit District) from liability if people continue to use the accessway before repairs are completed.

The main beach access path is located at the southwest end of the parking lot, near the restrooms and rivermouth. This accessway regularly sees a high level of use, and the vast majority of cars park as close to this point as possible. The parking lot normally fills from southwest to northeast, unless people specifically want to use the northern access point, in which case they park as near to it as possible. It seems likely that people parking here because of the pay machines at the subject site, would most desire to use this access, as it puts them on the beach nearby where they are used to going. Also, that area of beach is less crowded than near the southern accessway.

Because the northern path is the only other convenient means of accessing the same beach, Special Condition #4 requires the city to diligently pursue efforts to repair the bridge and reopen the northern accessway. The Commission seeks assurance that progress is being made in this direction, since the “Closed” signs were originally placed without a CDP, and the Commission wants to see that access fully open as quickly as possible. Reopening this access would provide a convenient and possibly less costly alternative to the “pay and display” machines.

With the three conditions identified in this finding, adverse impacts on beach access at the subject site will be mitigated by alternative access improvements. In addition, with a term of one year for the permit, if continued use of the meters is proposed, the Commission has the opportunity to again review this matter and review information on any identified impacts for the first year of operation. With these conditions, the Commission finds the proposed program consistent with the cited access policies of the certified LCP and Coastal Act.

3. Visual Resources. The following LCP policies are most applicable to the subject proposal:

**Goal IV-C, Policy IV-22**

Enhance public improvements along appropriate bluff top areas which provide significant scenic vistas when such improvements are not in conflict with bluff preservation policies. Improvements shall include the installation of benches for scenic viewing ... along the upper bluff area south of Del Mar Canyon.

**Goal IV-C, Policy IV-24**

Preserve views of the Pacific Ocean from Camino del Mar through the application of scenic view easements and related view preservation restrictions ...

The proposed paid parking program will add structures along the west side of Camino del Mar, which is a scenic highway and major coastal access route. Although the “pay and display” machines are larger than parking meters, only two of them are needed to service approximately 50 parking spaces. These are placed within wooded areas along the road, and do not block any existing public views of the bluffs and ocean. For the most part, associated signage is immediately adjacent to the machines and likewise does not interfere with existing views. One sign north of the actual project site warns “Parking Changes Ahead.” This free-standing sign, of similar size and shape to typical roadside directional and informational signs, is not attractive but appears to be temporary, until drivers become used to paying for the parking ahead (to the south). The sign does not block any existing public views. The Commission finds that no significant visual impacts will result from the operation of this program and that the project is consistent with the cited LCP policies.

4. Unpermitted Development. The development that occurred without a permit consists of installation of the two “pay and display” machines and collection of fees. Because this is an after-the-fact permit approval, Special Condition #5 requires the “prior to issuance” conditions be satisfied within 60 days of Commission action.

Although development has taken place prior to approval of the CDP at the local level, and prior to its being appealed to the Commission, consideration of the application by the Commission has been based solely upon the certified LCP policies and Chapter 3 access policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the City of Del Mar LCP/Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

5. Local Coastal Planning. The proposed paid parking program does not change the location, or amount, of public parking in the vicinity, but may change the intensity of use of access to the beach in this location if people want to avoid paying parking fees. The site is designated as public parkland in the LUP and zoned the same in the City’s

implementation component. The ongoing use is fully consistent with a parkland designation, as the parking facilities support the adjacent bluff top open space and nearby beach. Previous findings have also demonstrated that the proposal, as conditioned, is consistent with the certified LCP and the access policies of the Coastal Act. Therefore, the Commission finds that approval of the proposal, as conditioned herein, will not prejudice the ability of the city to continue to implement its fully certified LCP.

6. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access and recreation policies of the certified LCP and the Coastal Act. Mitigation measures, including provision of bicycle racks and viewing benches, and the future reopening of the northern accessway, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

#### STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.